IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 174 of 2006
With
CIVIL APPLICATION No. 12498 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMBHIBEN WD/O JERAMBHAI RATHOD - Appellant(s)
Versus
MULJI BHAVAN - Defendant(s)

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Appearance :
MR RC KAKKAD for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
None for Defendant(s) : 1,
MR NIRAV THAKKAR for Defendant(s) : 1.2.1, 1.2.2,1.2.3

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/12/2006

ORAL JUDGMENT

1. Mr.R.C. Kakkad, learned counsel for the appellants and Mr.Nirav Thakkar, learned counsel for the respondents.

2. The appeal is admitted for hearing on the following substantial question of law;

   “Whether on the facts and in the circumstances of the case, the judgment and decree delivered by the learned first appellate court cannot be sustained in the eyes of law as the same are against the respondent (before the first appellate court) who had expired much before the matter was taken up for hearing.”

3. With the consent of the parties, the matter is finally heard.

4. It is not in dispute before me that Regular Civil Suit No.617 of 1982 was filed by Bhavan Gangadas (since deceased). The said suit was finally dismissed on 23/4/1993 by the learned Civil Judge (SD), Jamnagar. The successors-cum-legal representative of late Bhavanbhai Gangadas filed Regular Civil Appeal No.105 of 1994. The appeal came to be heard and decided by the learned Additional District Judge at Jamnagar, who vide his judgment and order dtd.26/4/2006 allowed the appeal and decreed the suit. Being aggrieved by the said judgment and decree, the present appellants, Ramuben,

Bhagwanjibhai, Naranbhai, Vasantbhai and Narmadaben claiming to be successors and legal representatives of original defendant Jerambhai Kurajibhai have filed this appeal submitting inter-alia that the judgment and decree passed by the learned first appellate court are bad on facts and law and is invalid, as the judgment and decree is against the interest of a person who was not alive on the date of the hearing of the appeal.

5. Mr.Thakkar, learned counsel appearing for the respondents did not dispute the fact of the death, but, however, contended that as the fact of the death was not brought to the notice of the Court, the appellants would not be entitled to raise that issue.

6. It is trite to say that no court would have jurisdiction to grant a decree in favour of or against a dead person. The only exception is that if a party to the suit or the appeal dies after the hearing is over, legal representatives are not required to be brought on record. In the present case, the respondent (before the first appellate court) Jerambhai Kurajibhai had expired much before the hearing had taken place. The law casts an obligation upon the appellant or the plaintiff to make an application for substitution of the legal representatives and in case,

such an application is not filed, the cause would abate. It may be a different thing that law casts an obligation upon the counsel of the respondent / defendant to inform the court that such respondent / defendant has expired. In a case where the defendant / respondent does not discharge his liability than too, the appellant / plaintiff would not be relieved of his obligation. Non-action on the part of the counsel of such deceased respondent / defendant may provide a cause in favour of the appellant / plaintiff to make an application for setting aside abatement and pray for condonation of delay, but such an action will have to be taken by the appellant.

7. As the judgment and decree passed by the learned first appellate court are against a dead person, the same cannot be allowed to stand. The impugned judgment and decree passed by the first appellate court are hereby quashed and set aside and the matter is remanded to the appellate court with a direction that it shall restore the matter on its Board and if the appellant before it makes necessary applications, then the said Court shall decide the application in accordance with law. The matter is remanded back with the observations aforesaid. Let a decree be framed accordingly.

8. As the appeal is being finally disposed of, orders on Civil Application No.12498 of 2006 are not required.

(R.S. GARG, J.)

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